

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

JULIAN ROZANI, Individually and on Behalf of All Others Similarly Situated,	)	Case No.: 19-cv-1897
	)	
	)	<b>CLASS ACTION COMPLAINT</b>
Plaintiff,	)	
	)	
v.	)	
	)	<b>Jury Trial Demanded</b>
ASSET RECOVERY SOLUTIONS, LLC,	)	
	)	
Defendant.	)	

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**INTRODUCTION**

1. This class action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”) and the Wisconsin Consumer Act, Chs. 421-427, Wis. Stats. (the “WCA”).

**JURISDICTION AND VENUE**

2. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331, 1337, and 1367. Venue in this District is proper in that Defendant directed its collection efforts into the District.

**PARTIES**

3. Plaintiff Julian Rozani is an individual who resides in the Eastern District of Wisconsin (Milwaukee County).

4. Plaintiff is a “consumer” as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that Defendant sought to collect from Plaintiff a debt incurred for personal, family, or household purposes.

5. Plaintiff is also a “customer” as defined in the Wisconsin Consumer Act, Wis. Stat. § 421.301(17), in that he engaged in a consumer credit transaction.

6. Defendant Asset Recovery Solutions, LLC (“ARS”) is a foreign limited liability company with its primary offices located at 2200 E. Devon Ave., Suite 200, Des Plaines, IL 60018.

7. ARS is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

8. ARS is engaged in the business of collecting debts owed to others and incurred for personal, family or household purposes.

9. ARS is licensed as a “Collection Agency” pursuant to Wis. Stat. § 218.04 and Wis. Admin. Code Ch. DFI-Bkg 74.

10. ARS is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

### **FACTS**

11. On or about January 4, 2019, ARS mailed a collection letter to Plaintiff regarding an alleged debt owed to “VELOCITY INVESTMENT LLC,” with an “Original Creditor” listed as “PROSPER FUNDING LLC.” A copy of the letter is attached to this complaint as Exhibit A.

12. Upon information and belief, the alleged debt referenced by Exhibit A was the result of a short-term, unsecured consumer loan, the proceeds of which were used only for personal, family, and household purposes.

13. Upon information and belief, Exhibit A is a form letter, generated by computer, and with the information specific to Plaintiff inserted by computer.

14. Upon information and belief, Exhibit A is a form debt collection letter used by ARS to attempt to collect alleged debts.

15. Upon information and belief, Exhibit A is the first written communication ARS mailed to Plaintiff regarding the alleged debt referenced in Exhibit A.

16. Exhibit A includes the following representation which largely reflects the statutory validation notice that the FDCPA, 15 U.S.C. § 1692g, requires the debt collector mail the alleged debtor along with, or within five days of, the initial communication:

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, that the debt or any portion thereof is disputed, this office will obtain verification of the debt or obtain a copy of a judgment and mail a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from current creditor.

17. Exhibit A also includes the following statements:

At this time, we wish to notify you that your creditor is preparing to refer your account to a law firm to review their ability to successfully recover your unpaid balance through litigation.

If you contact our office and establish a satisfactory resolution your creditor will not refer your account to GURSTEL STALOGH & CHARGO P.A., or an associated law firm in your state, for review at this time.

18. On the face of Exhibit A, the unsophisticated consumer would understand such language to be a threat that litigation would be commenced immediately if ARS and/or velocity did not receive payment as demanded by the letter.

19. Exhibit A repeatedly emphasizes the immediacy of the threat of litigation by stating that the creditor of Plaintiff's alleged debt is actively preparing to refer his account to an attorney "[a]t this time," and that the "establish[ment] of a satisfactory resolution" of his account is the only means by which to avoid the referral of his account to a law firm "at this time."

20. Exhibit A further conveys the immanency of legal action by referencing a specific law firm, "GURSTEL STALOGH & CHARGO P.A."

21. Upon information and belief, ARS and/or the creditor of Plaintiff's alleged debt had no intentions to refer the account to "GURSTEL STALOGH & CHARGO P.A." or any other attorney prior to the expiration of the 30-day validation period.

22. Upon information and belief, ARS and/or the creditor of Plaintiff's alleged debt had no definite intentions to refer Plaintiff's account to "GURSTEL STALOCH & CHARGO P.A." or any other attorney at any point as of the date of Exhibit A.

23. As of December 27, 2019, no legal action has been brought against Plaintiff with respect to his alleged debt owed to "VELOCITY INVESTMENT LLC."

24. Upon information and belief, the sole purpose of including the above referenced language in Exhibit A is to impart upon the unsophisticated consumer a sense of urgency based on false pretenses and to discourage the consumer from exercising their rights to dispute and request verification of their alleged debts.

25. Although Exhibit A includes the validation notice required under 15 U.S.C. § 1692g, the letter does not explain how Plaintiff's rights to dispute and request verification of the alleged debt "fit together" with the letter's threat to refer the debt to "GURSTEL, STALOCH & CHARGO, or an associated law firm in your state." *See, e.g., Bartlett v. Heibl*, 128 F.3d 497 (7th Cir. 1997).

26. Exhibit A overshadows the validation notice.

27. Plaintiff was confused and misled by Exhibit A.

28. The unsophisticated consumer would be confused and misled by Exhibit A.

### **The FDCPA**

29. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. *Derosia v. Credit Corp. Solutions*, 2018 U.S. Dist. LEXIS 50016, \*12, 2018 WL 1513043 (E.D. Wis. March 27, 2018); *Pogorzelski v. Messerli & Felix APC*, No. 16-C-1330, 2017 U.S. Dist. LEXIS 89678 \*9 (E.D. Wis. June 12, 2017) ("A plaintiff who receives misinformation from a debt collector has suffered the type of

injury the FDCPA was intended to protect against.”); *Spuhler v. State Collection Servs.*, No. 16-CV-1149, 2017 U.S. Dist. LEXIS 177631 (E.D. Wis. Oct. 26, 2017) (“As in Pogorzelski, the Spuhlers’ allegations that the debt collection letters sent by State Collection contained false representations of the character, amount, or legal status of a debt in violation of their rights under the FDCPA sufficiently pleads a concrete injury-in-fact for purposes of standing.”); *Lorang v. Ditech Fin. LLC*, 2017 U.S. Dist. LEXIS 169286, at \*6 (W.D. Wis. Oct. 13, 2017) (“the weight of authority in this circuit is that a misrepresentation about a debt is a sufficient injury for standing because a primary purpose of the FDCPA is to protect consumers from receiving false and misleading information.”); *Qualls v. T-H Prof’l & Med. Collections, Ltd.*, 2017 U.S. Dist. LEXIS 113037, at \*8 (C.D. Ill. July 20, 2017) (“Courts in this Circuit, both before and after *Spokeo*, have rejected similar challenges to standing in FDCPA cases.”) (citing “*Hayes v. Convergent Healthcare Recoveries, Inc.*, 2016 U.S. Dist. LEXIS 139743 (C.D. Ill. 2016)); *Long v. Fenton & McGarvey Law Firm P.S.C.*, 223 F. Supp. 3d 773, 777 (S.D. Ind. Dec. 9, 2016) (“While courts have found that violations of other statutes . . . do not create concrete injuries in fact, violations of the FDCPA are distinguishable from these other statutes and have been repeatedly found to establish concrete injuries.”); *Bock v. Pressler & Pressler, LLP*, No. 11-7593, 2017 U.S. Dist. LEXIS 81058 \*21 (D.N.J. May 25, 2017) (“through [s]ection 1692e of the FDCPA, Congress established ‘an enforceable right to truthful information concerning’ debt collection practices, a decision that ‘was undoubtedly influenced by congressional awareness that the intentional provision of misinformation’ related to such practices, ‘contribute[s] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy,’”); *Quinn v. Specialized Loan Servicing, LLC*, No. 16 C 2021, 2016 U.S. Dist. LEXIS 107299 \*8-13 (N.D. Ill. Aug. 11, 2016) (rejecting challenge to Plaintiff’s standing based

upon alleged FDCPA statutory violation); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 U.S. Dist. LEXIS 89258 \*9-10 (N.D. Ill. July 11, 2016) (“When a federal statute is violated, and especially when Congress has created a cause of action for its violation, by definition Congress has created a legally protected interest that it deems important enough for a lawsuit.”); *see also Mogg v. Jacobs*, No. 15-CV-1142-JPG-DGW, 2016 U.S. Dist. LEXIS 33229, 2016 WL 1029396, at \*5 (S.D. Ill. Mar. 15, 2016) (“Congress does have the power to enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute,” (quoting *Sterk v. Redbox Automated Retail, LLC*, 770 F.3d 618, 623 (7th Cir. 2014))). For this reason, and to encourage consumers to bring FDCPA actions, Congress authorized an award of statutory damages for violations. 15 U.S.C. § 1692k(a).

30. Moreover, Congress has explicitly described the FDCPA as regulating “abusive practices” in debt collection. 15 U.S.C. §§ 1692(a) – 1692(e). Any person who receives a debt collection letter containing a violation of the FDCPA is a victim of abusive practices. *See* 15 U.S.C. § 1692(e) (“It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses”).

31. Misrepresentations of the character, amount or legal status of any debt, including language confusing or obscuring the identity of the entity to whom the debt is owed, injure or risk injury to interests expressly protected by Congress in the FDCPA. *See Oloko v. Receivable Recovery Servs.*, 2019 U.S. Dist. LEXIS 140164 (N.D. Ill. Aug. 19, 2019); *Encore Receivable Management, Inc.*, 18-cv-1484-WED, 2019 U.S. Dist. LEXIS 134377 (E.D. Wis. Aug. 9, 2019); *Richardson v. Diversified Consultants*, No. 17-cv-4047, 2019 U.S. Dist. LEXIS 118786 \*10-11

(N.D. Ill. July 17, 2019) (“the receipt of a communication misrepresenting the character of the debt (here, the amount owed) is the kind of injury that Congress sought to prevent through the FDCPA. ‘Such an injury falls squarely within the ambit of what Congress gave consumers in the FDCPA: ‘a legally protected interest in certain information about debts,’ with ‘deprivation of information about one’s debt (in a communication directed to the plaintiff consumer) a cognizable injury.’” (internal citations omitted); *see also Pierre v. Midland Credit Mgmt., Inc.*, 2017 WL 1427070, at \*4 (N.D. Ill. Apr. 21, 2017); *Saenz v. Buckeye Check Cashing of Illinois*, 2016 WL 5080747, at \*1-2 (N.D. Ill. Sept. 20, 2016); *Bernal v. NRA Grp., LLC*, 318 F.R.D. 64, 72 (N.D. Ill. 2016) (holding that Plaintiff had standing to challenge misleading communication sent to him because the communication violated his “right to be free from such misleading communications”). Such misrepresentations may cause consumers to make incorrect decisions about their finances or make payments to incorrect parties.

32. 15 U.S.C. § 1692e generally prohibits “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

33. 15 U.S.C. § 1692e(5) specifically prohibits the “threat to take any action that cannot legally be taken or that is not intended to be taken.”

34. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

35. 15 U.S.C. § 1692f generally prohibits “unfair or unconscionable means to collect or attempt to collect any debt.”

36. 15 U.S.C. § 1692g states, in part:

**(a) Notice of debt; contents**

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the

consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

**(b) Disputed Debts**

...

Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

**The WCA**

37. The Wisconsin Consumer Act ("WCA") was enacted to protect consumers against unfair, deceptive, and unconscionable business practices and to encourage development of fair and economically sound practices in consumer transactions. Wis. Stat. § 421.102(2).

38. The Wisconsin Supreme Court has favorably cited authority finding that the WCA "goes further to protect consumer interests than any other such legislation in the country," and is "probably the most sweeping consumer credit legislation yet enacted in any state." *Kett v.*



*Community Credit Plan, Inc.*, 228 Wis. 2d 1, 18 n.15, 596 N.W.2d 786 (1999) (citations omitted).

39. To further these goals, the Act's protections must be "liberally construed and applied." Wis. Stat. § 421.102(1); *see also* § 425.301.

40. "The basic purpose of the remedies set forth in Chapter 425, Stats., is to induce compliance with the WCA and thereby promote its underlying objectives." *First Wisconsin Nat'l Bank v. Nicolaou*, 113 Wis. 2d 524, 533, 335 N.W.2d 390 (1983). Thus, private actions under the WCA are designed to both benefit consumers whose rights have been violated and also competitors of the violators, whose competitive advantage should not be diminished because of their compliance with the law.

41. To carry out this intent, the WCA provides Wisconsin consumers with an array of protections and legal remedies. The Act contains significant and sweeping restrictions on the activities of those attempting to collect debts. *See* Wis. Stats. § 427.104.

42. The Act limits the amounts and types of additional fees that may be charged to consumers in conjunction with transactions. Wis. Stats. § 422.202(1). The Act also provides injured consumers with causes of action for class-wide statutory and actual damages and injunctive remedies against defendants on behalf of all customers who suffer similar injuries. *See* Wis. Stats. §§ 426.110(1); § 426.110(4)(e). Finally, "a customer may not waive or agree to forego rights or benefits under [the Act]." Wis. Stat. § 421.106(1).

43. Consumers' WCA claims under Wis. Stat. § 427.104(1) are analyzed using the same methods as claims under the FDCPA. Indeed, the WCA itself requires that the court analyze the WCA "in accordance with the policies underlying a federal consumer credit protection act," including the FDCPA. Wis. Stat. § 421.102(1).

44. Further, the Wisconsin Supreme Court has held that WCA claims relating to debt collection are to be analyzed under the “unsophisticated consumer” standard. *Brunton v. Nuvelt Credit Corp.*, 785 N.W.2d 302, 314-15. In *Brunton*, the Wisconsin Supreme Court explicitly adopted and followed the “unsophisticated consumer” standard, citing and discussing *Gammon v. GC Servs. Ltd. P’ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). *Id.*

45. Wis. Stat. § 427.104(1)(g) states that a debt collector may not: "Communicate with the customer or a person related to the customer with such frequency of at such unusual hours or in such a manner as can reasonably be expected to threaten or harass the customer."

46. Wis. Stat. § 427.104(1)(h) states that a debt collector may not: "Engage in other conduct . . . in such a manner as can reasonably be expected to threaten or harass the customer."

47. The Wisconsin Department of Financial Institutions, which is tasked with regulating licensed collection agencies, has found that "conduct which violates the Federal Fair Debt Collection Practices Act" can reasonably be expected to threaten or harass the customer. *See* Wis. Admin. Code DFI-Bkg 74.16(9) ("Oppressive and deceptive practices prohibited.").

48. Wis. Stat. § 427.104(1)(L) states that a debt collector may not: “Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt.”

### **COUNT I – FDCPA**

49. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

50. ARS and/or the creditor of Plaintiff’s alleged debt had no intentions to refer Plaintiffs account to “GURSTEL STALOGH & CHARGO P.A.” or any other attorney prior to the expiration of the 30-day validation period.

51. ARS and/or the creditor of Plaintiff's alleged debt had no definite intentions to refer Plaintiffs account to "GURSTEL STALOCH & CHARGO P.A." or any other attorney at any point as of the date of Exhibit A.

52. By stating: "If you contact our office and establish a satisfactory resolution your creditor will not refer your account to GURSTEL STALOCH & CHARGO P.A., or an associated law firm in your state, for review at this time," Exhibit A overshadows the validation notice.

53. Defendant violated 15 U.S.C. §§ 1692e, 1692e(5), 1692e(10), and 1692g(b).

### **COUNT II - WCA**

54. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

55. By stating: "If you contact our office and establish a satisfactory resolution your creditor will not refer your account to GURSTEL STALOCH & CHARGO P.A., or an associated law firm in your state, for review at this time," Exhibit A threatens action against Plaintiff which ARS and/or the creditor of Plaintiff's alleged debt do not intend to take with respect to Plaintiff's alleged debt.

56. Exhibit A violates the FDCPA.

57. ARS is licensed as a "Collection Agency" pursuant to Wis. Stat. § 218.04 and Wis. Admin. Code Ch. DFI-Bkg 74.

58. Defendant violated Wis. Stat. §§ 427.104(g), 427.104(h), and 427.104(L).

### **CLASS ALLEGATIONS**

59. Plaintiff brings this action on behalf of a Class, consisting of (a) all natural persons in the State of Wisconsin (b) who were sent a collection letter in the form represented by

Exhibit A, (c) seeking to collect a debt for personal, family or household purposes, (d) between December 27, 2018 and December 27, 2019, inclusive, (e) that was not returned by the postal service.

60. The Class is so numerous that joinder is impracticable. On information and belief, there are more than 50 members of the Class.

61. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether the Defendants complied with 15 U.S.C. § 1692e, 1692e(10), and 1692g.

62. Plaintiff's claims are typical of the claims of the Class members. All are based on the same factual and legal theories.

63. Plaintiff will fairly and adequately represent the interests of the Class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

64. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

#### **JURY DEMAND**

65. Plaintiff hereby demands a trial by jury.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendants for:

- (a) actual damages;
- (b) statutory damages;
- (c) attorneys' fees, litigation expenses and costs of suit; and

(d) such other or further relief as the Court deems proper.

Dated: December 27, 2019

**ADEMI & O'REILLY, LLP**

By: /s/ Mark A. Eldridge  
John D. Blythin (SBN 1046105)  
Mark A. Eldridge (SBN 1089944)  
Jesse Fruchter (SBN 1097673)  
Ben J. Slatky (SBN 1106892)  
3620 East Layton Avenue  
Cudahy, WI 53110  
(414) 482-8000  
(414) 482-8001 (fax)  
jblythin@ademilaw.com  
meldridge@ademilaw.com  
jfruchter@ademilaw.com  
bslatky@ademilaw.com